

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID F. JADWIN, D.O.,

Plaintiff,

vs.

COUNTY OF KERN; et al.

Defendants.

1:07-cv-00026-OWW-TAG

ORDER RE: PLAINTIFF'S MOTION TO
COMPEL FURTHER PRODUCTION AND
REQUEST FOR SANCTIONS

(Doc. 215)

The above matter came on regularly for hearing before the Honorable Theresa A. Goldner on September 29, 2008 at 9:00 a.m., in the United States District Court courtroom at 1300 18th Street, Suite A, Bakersfield, California. The Court has read and reviewed the motions, declarations and memoranda of the parties, and considered the arguments of counsel. Eugene D. Lee of the Law Office of Eugene Lee appeared for Plaintiff and Mark A. Wasser of the Law Offices of Mark A. Wasser and Karen Barnes, Chief Deputy County Counsel for the County of Kern, appeared for Defendants, and the matter was heard. Good cause appearing, the Court hereby orders as follows.

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IT IS HEREBY ORDERED that Plaintiff's motion to compel further production of documents is GRANTED IN PART AND DENIED IN PART as follows:

a. **Privilege Log**

BATES BEG	BATES END	DATE	TO	FROM	CC	DOCUMENT TYPE	RULING
9336	9337	2003				Disciplinary Actions and Involuntary Terminations	Withdrawn by Plaintiff
10925	10926	3/3/2003	Peter H. Parra Barbara Patrick	Peter K. Bryan	Marvin Kolb	Memorandum re Personnel Item – Adam Lang, M.D.	GRANTED
14793	15315	9/06 – 12/06				Surgical Pathology Reports	Withdrawn by Plaintiff
16683	16894	Nov-02				Performance Evaluations – Pathology Department	GRANTED - after in camera review
16897	16900	7/25/2006	David Hill Irwin Harris Philip Dutt	Gilbert Martinez		Email relating to Change of Laboratory Director	GRANTED
16902	16905	7/20/2006				Laboratory Personnel Report re Gilbert Martinez	GRANTED
15934	15934	1/6/2003	Medical Executive Committee	Peter Bryan	Pete Parra	Memorandum	Withdrawn by Plaintiff
15935	15935	6/10/2003	Medicine Search Committee	Maureen Martin Marvin Kolb	Navin Amin Peter Bryan Eugene Kercher Saman Ratnayaki	Memorandum	GRANTED

					Tai Yoo		
15936	15936	1/6/2003	Eugene Kercher	Navin Amin		Memorandum	GRANTED
			Marvin Kolb	Peter Bryan			
			Maureen Martin				
			Tai Yoo				

The Court has conducted an in camera review of the documents identified on the privilege log as Bates Stamp numbers 16683-16894. Defendants' objection to the production of these documents on the ground that they are not relevant, is overruled. The motion for an order compelling the production of these documents is GRANTED, and to the extent that any privacy interest is asserted in these documents, the Court finds that the balancing test weighs in favor of limited disclosure and a protective order as to the documents that constitute non-party performance evaluations. Accordingly, Plaintiff's motion for an order to compel production of the documents identified on the privilege log as Bates Stamp numbers 16683, 16685, 16687, 16689, 16691, 16694, 16696, 16698, 166700, 166702, 166705, 166707, 16709, 16711, 16713, 16715, 16717, 16719, 16721, 16723, 16723, 16724, 16727, 16729, 16731, 16733, 16735, 16737, 16739, 16741, 16743, 16745, 16747, 16749, 16751, 16753, 16755, 16757, 16759, 16761, 16763, 16765, 16767, 16769, 16771, 16773, 16775, 16777, 16779, 16781, 16783, 16785, 16787, 16789, 16791, 16793, 16795, 16797, 16799, 167801, 167803, 167805, 167807, 167809, 16811, 16813, 16815, 16817, 16819, 16821, 16823, 16825, 16827, 16829, 16831, 16833, 16835, 16837, 16839, 16841, 16843, 16845, 16947, 16849, 16851, 16853, 16856, 16858, 16860, 16862, 16864, 16866, 16868, 16870, 16872, 16874, 16876, 16878, 16880, 16882, 16884, 16886, 16888, 16890, 16892, and 16894, is GRANTED, and such documents shall be produced by Defendants to Plaintiff no later than October 9, 2008, subject to the following protective order: the documents shall not be disclosed to any third party other than Plaintiff's legal counsel and retained experts in this lawsuit, and they shall be used only in and for purposes of this lawsuit.

The remaining documents in the group of documents identified as Bates Stamp numbers 16683-16893 (excluding those identified by individual Bates Stamp numbers in the previous paragraph) shall be produced by Defendants to Plaintiff on or before October 9, 2008, without a

1 protective order.

2 At the motion hearing in this matter, Defendants' counsel presented copies of the above
3 documents identified as Bates Stamp numbers 16683-16894 to the Court for an in camera review,
4 and advised the Court that they were Defendants' only copies. Defendants' counsel shall make
5 arrangements to retrieve the copies from the Court's chambers at 1200 Truxtun Avenue, Suite 120,
6 Bakersfield, California, 93301, no later than 4:00 p.m. on October 7, 2008, by contacting Courtroom
7 Deputy Alan Leon Guerrero at 661-326-6620 or by email to: aleonguerrero@caed.uscourts.gov.

8 **b. Request 65**

9 GRANTED subject to a protective order whereby (i) HIPAA-protected patient identifying
10 information produced in response to this Request shall be not disclosed to any third party other than
11 Plaintiff's legal counsel and retained experts and (ii) documents produced in response to this Request
12 shall be used by Plaintiff only for purposes of this lawsuit and not for any other purpose, such as
13 marketing of Columbia Healthcare Analytics, Inc.

14 **b. Requests 66 and 67**

15 The parties are ordered to meet and confer by October 10, 2008, directly and indirectly
16 through counsel, database programmers and IT staff, regarding identification of cost-effective
17 methods for extracting the electronic data from KMC's HBO Star system in response to these
18 Requests and allocation of any associated cost among the parties. The parties shall notify the Court
19 as to whether the parties have successfully met and conferred by no later than the close of business
20 on October 10, 2008, provided that if the parties were not successful, they shall each submit by no
21 later than the close of business on October 10, 2008, a letter brief to the Court discussing the rights
22 and obligations of each party under the FRCP and e-discovery rules with respect to these Requests.

23 **c. Request 70**

24 GRANTED subject to a protective order whereby (i) HIPAA-protected patient identifying
25 information produced in response to this Request shall be not disclosed to any third party other than
26 Plaintiff's legal counsel and retained experts and (ii) documents produced in response to this Request
27 shall be used by Plaintiff only for purposes of this lawsuit and not for any other purpose, such as
28 marketing of Columbia Healthcare Analytics, Inc.

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2 d. **Request 71**

3 GRANTED subject to a protective order whereby (i) HIPAA-protected patient identifying
4 information produced in response to this Request shall be not disclosed to any third party other than
5 Plaintiff's legal counsel and retained experts and (ii) documents produced in response to this Request
6 shall be used by Plaintiff only for purposes of this lawsuit and not for any other purpose, such as
7 marketing of Columbia Healthcare Analytics, Inc.

8 e. **Request 72**

9 GRANTED subject to a protective order whereby (i) HIPAA-protected patient identifying
10 information produced in response to this Request shall be not disclosed to any third party other than
11 Plaintiff's legal counsel and retained experts and (ii) documents produced in response to this Request
12 shall be used by Plaintiff only for purposes of this lawsuit and not for any other purpose, such as
13 marketing of Columbia Healthcare Analytics, Inc.

14 f. **Request 73**

15 Defendants represent they have no documents responsive to this request. Based thereon, the
16 motion to compel is DENIED.

17 g. **Request 74**

18 GRANTED subject to a protective order whereby (i) HIPAA-protected patient identifying
19 information produced in response to this Request shall be not disclosed to any third party other than
20 Plaintiff's legal counsel and retained experts and (ii) documents produced in response to this Request
21 shall be used by Plaintiff only for purposes of this lawsuit and not for any other purpose, such as
22 marketing of Columbia Healthcare Analytics, Inc.

23 h. **Request 76**

24 Defendants represent that have no documents responsive to this request, because the dictation
25 logs that were the subject of this request were automatically deleted after six months and prior to
26 commencement of this litigation. Plaintiff contends that Defendants were sent a litigation hold letter,
27 and should not have allowed the logs to be destroyed. Plaintiff's motion for an order compelling the
28 production of the dictation logs is DENIED WITHOUT PREJUDICE. Plaintiff may file a motion
seeking sanctions for spoliation or spoliation instructions.

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2 i. **Requests 77 and 78**

3 The parties stipulated that (i) Defendant County of Kern would provide Plaintiff by close of
4 business on Wednesday, October 1, 2008, with the Bates Stamp numbers of the documents which
5 they have already produced in response to these Requests and (ii) in the event documents have not
6 been so produced, Defendant County of Kern shall promptly produce such documents to Plaintiff.
7 The Court accepts this stipulation and makes it an order of the Court.

8 j. **Request 102**

9 Withdrawn by Plaintiff.

10 k. **Request 103**

11 Withdrawn by Plaintiff.

12 l. **Request 104**

13 Withdrawn by Plaintiff.

14 m. **Request 105**

15 Withdrawn by Plaintiff.

16 IT IS HEREBY FURTHER ORDERED that Defendant shall make documents responsive to
17 the foregoing Requests with respect to which the Court has granted Plaintiff's motion to compel,
18 available for Plaintiff's inspection and copying, at Plaintiff's expense, at Kern Medical Center at 10
19 a.m. on October 9 and 10, 2008, as well as each working day of the following week, if necessary.

20 IT IS HEREBY FURTHER ORDERED that Defendant's request to be provided a copy, at
21 Defendant's expense, of any such documents which Plaintiff copies is DENIED.

22 IT IS HEREBY FURTHER ORDERED that Plaintiff's request for sanctions in the amount of
23 \$5,120 is taken under submission.

24 IT IS SO ORDERED.

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26 Dated: October 6, 2008

/s/ Theresa A. Goldner

UNITED STATES MAGISTRATE JUDGE